



3-26-07

TW D/A

Attorney's Docket No.: 17075-004008 / 0103H

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Mark E. Deem, et al.

Art Unit : 3743

Patent No.: 7,165,548 ✓

Examiner : Aaron J. Lewis

Issue Date : January 23, 2007

Conf. No. : 9190

Serial No. : 10/630,473

Filed : July 29, 2003

Title : METHODS AND DEVICES FOR USE IN PERFORMING PULMONARY PROCEDURES

**Mail Stop PETITIONS / OPLA**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**PETITION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR §1.705(d)**

Applicant hereby petitions for reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent at time of issuance. The *Issue Notification* and updated *Determination of Patent Term Adjustment* under 35 U.S.C. 154(b) states that the Total Patent Term Adjustment at issuance is -0- days. Reconsideration of the PTA to reasonably reduce the APPL Delay from 221 days to 101 days, and increase Total PTA from -0- to 77 days, is respectfully requested.

The Patent Term Adjustment History in the PAIR system reflects that the U.S. Patent and Trademark Office (PTO) calculated the PTA from the time of Allowance until Issuance as follows:

03/27/2007 HDEMESS2 00000142 061050 7165548

01 FC:1455 200.00 DA

## CERTIFICATE OF MAILING BY "EXPRESS MAIL"

"Express Mail" Mailing Label Number EV 965983577US

Date of Deposit: March 23, 2007

I hereby certify that this paper is being deposited with the United States Postal "Express Mail Post Office to Addressee" Service under 37 CFR §1.10 on the date indicated above and is addressed to: Commissioner for Patents, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

Judith A. Sherman

Applicant : Mark E. Deem, et al.  
Patent No. : 7,165,548  
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Page : 2 of 3

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(1) PTO issue date of January 23, 2007 which is beyond the 36 month guarantee date of July 29, 2006. **Applicant is in agreement with the PTO Delay of 163 days.**

(2) PTO issue date of January 23, 2007 which is also beyond the four-month date from payment of the Issue Fee received and verified September 8, 2006. **Applicant is in agreement with the PTO Delay of 15 days.**

(3) Applicant submission of a "Miscellaneous Incoming Letter" entered on September 8, 2007 resulting in APPL Delay of 120 days. **Applicant is not in agreement with this APPL Delay of 120 days and contends there should be no APPL delay days as made evident in the remarks below.**

#### **REMARKS**

In regard to calculation point (3) above regarding the Office's receipt of a *Miscellaneous Incoming Letter* on September 8, 2006, Applicant directs attention to the entries for receipt of the *Issue Fee Payment* and receipt of the *Petition* (for Patent Term Adjustment at allowance). Each has a receipt date of September 8, 2006. The noted "*Petition*" was a good faith *Letter Regarding Patent Term Adjustment Pursuant to Comment 43 of the Final Rule*, Applicant, thus, argues that the "*Miscellaneous Incoming Letter*" is an erroneous and duplicate entry. This is further evidenced by the facts that (a) there are no documents entered or scanned in the Image File Wrapper (IFW) for such a "*Miscellaneous Letter*," (b) the Applicant's date stamped return receipt postcard lists only the *Letter Regarding Patent Term Adjustment* and *Issue Fee Transmittal* were filed September 8, 2006 by Express Mail (copy attached), and (c) telephone inquiries to the Office have not produced any information or possibilities regarding the existence of such a "*Miscellaneous Incoming Letter*."

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Page : 3 of 3

Attorney's Docket No.: 17075-004008 / 0103H

In summation and in consideration of the foregoing remarks regarding the plausibility of a clerical error and the fact that *Petitions* as well as *Letters* regarding Patent Term Adjustment after allowance are acceptable under 37 C.F.R. 1.704(c)(10), and therefore, not subject to APPL Delay, Applicant respectfully requests that the determination of the Patent Term Adjustment at Issuance be re-calculated to reflect the PTA at Issuance as follows:

- PTO Delay: 178 days (same)
- APPL Delay: 101 days (remove the post allowance 120 days)
- Total PTA: 77 days

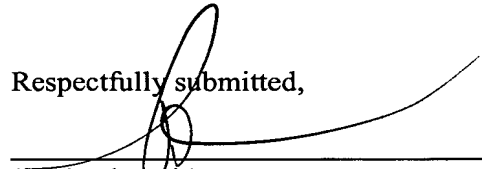
A copy of the following document is provided for reference:

(1) *Date-stamped return receipt postcard* for the submission of a *Letter Regarding Patent Term Adjustment and Issue Fee Transmittal* dated September 8, 2006.

Applicant also requests the waiving of the \$200.00 payment for the petition fee required by 1.18(e) due to the nature of this error after allowance. If this request does not meet the criteria for dismissal or waiver of a PTA petition fee, please apply the fee and any other charges or credits to Deposit Account No. 06-1050.

Thank you kindly for your consideration of this Petition. If there should be any questions or additional information required, please call the undersigned.

Respectfully submitted,



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Stephanie Seidman  
Reg. No. 33,779

Attorney Docket No. 17075-004008 / 0103H  
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Attorney's Docket No. 17075-004008	Express Mail Label No. EV 740119170US	Mailing Date September 8, 2006	
Application No. 10/630,473	Filing Date July 29, 2003	Attorney/Secretary Init FCH/IDK/kzf	
Title of the Invention <b>METHODS AND DEVICES FOR USE IN PERFORMING PULMONARY PROCEDURES</b>			
Applicant Mark E. Deem, et al.			
Client Reference No. 0103H			
Enclosures · Transmittal Letter (1 page) including Request for Patent Copies; · Letter regarding Patent Term Adjustment pursuant to Comment 43 of the Final Rule (2 pages); · Issue Fee Transmittal (Part B) (1 page); · And this Return Postcard			

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